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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CEMONN W. KESSEE,

Plaintiff and Appellant,

v.

FIRST AMERICAN TITLE COMPANY,

Defendant and Respondent.

E060876

(Super.Ct.No. CIVVS1105379)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Michael A. Sachs,
Judge. Affirmed.

Aviles & Associates and Moises A. Aviles for Plaintiff and Appellant.

Hall & Bailey, John L. Bailey and Barbara M. Moore for Defendant and
Respondent.

Plaintiff and appellant, Cemonn W. Kessee, appeals from the court's order
granting the motion of defendant and respondent, First American Title Company, for
summary judgment. The motion addresses only the fifth cause of action for breach of

contract, the remaining causes of action of the third amended complaint having been disposed of by demurrer. As discussed below, we affirm the trial court's ruling.

I. FACTS AND PROCEDURE

Plaintiff bought a house in a subdivision in Hesperia in 2008. The house was located at 13127 Modesto Court, in Hesperia, California. The deed described the property as "LOT 779 OF TRACT NO. 16676-9 AS SHOWN BY MAP ON FILE IN BOOK 306 PAGES 89 THROUGH 92 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA," with certain exceptions and reservations not relevant here and recites the assessor's parcel number as 3046-201-24. Defendant issued its title insurance policy with that description.

In March 2010, the City of Hesperia notified plaintiff that her property was part of a subdivision that was built out of compliance with both the final tract map and the Subdivision Map Act. (Gov. Code, § 66410 et seq.) The notice was recorded. The notice further stated: "The City of Hesperia . . . and the developer of Mission Crest have prepared a new, accurate final tract map to correct the legal description of the Property. In order to record the new final tract map, the signatures of all affected property owners of record on Modesto Court are necessary. . . ." Plaintiff refused to sign the corrected map.

In July 2011, plaintiff's attorney made a written claim against the policy of title insurance. In it, plaintiff's attorney stated: "Under Paragraph 14 of the above risks, it is

the agent, . . . , the lender, . . . , and *you*, First American Title Company, that have breached your fiduciary duties when they and you allowed my client to purchase Lot 24 when they and you should have known all of the defects surrounding the Subdivision Map. Title insurance should not have been given to my client until all of the title defects have been resolved.” Defendant denied the claim. The mortgage lender completed a nonjudicial foreclosure on the property in July 2012. The legal description and assessor’s parcel number in the trustee’s deed upon sale are identical with those in the deed to plaintiff and the descriptions in the policy of title insurance. Plaintiff lost the property because of her inability to refinance her loan due to unexpected taxes.

On December 3, 2012, plaintiff filed her third amended complaint. After several demurrers, only the fifth cause of action for breach of contract remained. On February 19, 2014, the court granted defendant’s motion for summary judgment on the remaining cause of action. The judgment was entered on July 7, 2014. This appeal followed.

II. DISCUSSION

A. Contentions of the Parties

Plaintiff contends defendant must pay her claim because (1) defendant knew of the subdivision map error in 2006 and (2) the preliminary report showed that the policy would cover the property next door (lot 23 or 779) instead of the property plaintiff actually bought (lot 24 or 778). Defendant contends plaintiff has failed to produce

evidence that defendant failed to perform any of its obligations under the policy of title insurance or that plaintiff did everything she was required to do under the contract.

B. Standard of Review

We independently review the trial court's order granting defendant's motion for summary judgment. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) A fundamental rule of appellate review is that an appealed judgment is presumed correct. "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown."

(*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "An appellant must provide an argument and legal authority to support [her] contentions. This burden requires more than a mere assertion that the judgment is wrong." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

C. Analysis

Plaintiff has failed to point to any evidence in the record that the subdivision map error affected her in any way. The descriptions in the deed to her, the preliminary title report, the title insurance policy, the trust deed she executed, and the trustee's deed upon sale are all essentially identical. She fails to explain how she "actually bought" lot 778. Regardless of how it was numbered, plaintiff apparently lived in and paid taxes on the property at 13127 Modesto Court until she defaulted on her loan. Defendant does not contend that it did not insure plaintiff's title to the property, however described. It

contends only that plaintiff's claim falls within certain exceptions to coverage. Even if the city's proposed corrected map would have renumbered plaintiff's property,¹ plaintiff fails to demonstrate how that would have had any effect on her, much less how it would give rise to a claim against her title insurance policy. Plaintiff contends that her signature on the corrected map would be "meaningless," but she points to no authority, and to nothing in the record, that would support such a contention.

Plaintiff herself cites *Lee v. Fidelity National Title Ins. Co.* (2010) 188 Cal.App.4th 583, 596-598 to the effect that "preliminary reports 'are merely reports on the status of title and are not themselves insurance policies that could provide the basis for a cause of action against a title company,'" The *Lee* opinion goes on to state that the proposed insured may rely on the preliminary report only as an offer stating the risk the title insurer is willing to assume. (*Ibid.*) Here, plaintiff does not contend that the policy she received differed in any way from the preliminary report.

Plaintiff's contention that defendant knew of, and concealed, the subdivision map error is based upon statements of neighbors and others, objections to which were sustained by the trial court. Plaintiff makes no effort to demonstrate that these evidentiary rulings were wrong.

¹ Neither party makes any attempt to explain the proposed corrected map. The maps and diagrams in the record either lack explanation, are illegible, or both.

This court is not obliged to search the record for errors if the appellant fails even to attempt to point them out. The presumption that the judgment is correct prevails here.

III. DISPOSITION

The judgment appealed from is affirmed. Respondent shall recover its costs on appeal.

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CUNNISON
J.*

We concur:

RAMIREZ
P. J.

MILLER
J.

* Retired judge of the Riverside Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.